

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**JOSEPH EDWARD STEFFENS
NANCY GAIL STEFFENS,**

Debtors.

Case No. **04-62147-7**

ORDER

At Butte in said District this 26th day of August, 2005.

In this Chapter 7 case, after due notice, a hearing was held in this case and other cases at Great Falls on August 25, 2005, on the Trustee's objections, filed July 8, 2005, to Proofs of Claim Nos. 4 filed on February 23, 2005, by World Financial Network National Bank ("World Financial") c/o Weinstein & Riley, P.S. ("Weinstein & Riley") for Chadwicks, and Proof of Claim No. 11 filed on March 16, 2005, by Chase Manhattan Bank U.S.A., NA ("Chase Manhattan Bank") as successor to Bank One Delaware, NA, also c/o Weinstein & Riley, respectively, on the grounds said claims have no attachments verifying that debts are owed. World Financial and Chase Manhattan Bank filed responses and set the matters for hearing, and included case law to support their contention that their Proofs of Claim are sufficient to establish prima facie validity under F.R.B.P. 3001(f), or at least evidence of their claims, and that Debtor's Schedules admit the debts.

The Trustee Gary S. Deschenes appeared in support of his objection. World Financial and Chase Manhattan Bank both were represented at the hearing by local attorney Kyle Larsen.

The Court heard argument of counsel. Deschenes stated that he objects World Financial's and Chase Manhattan Bank's Proofs of Claim because they do not include itemized statements of interest and other charges. The Court agreed, and granted World Financial and Chase Manhattan Bank thirty (30) days each to file an amended Proofs of Claim with itemized summaries of their accounts, including interest and other charges, copies of pertinent monthly statements and, if appropriate, a reference to any transfer of claims including identification of transferors and transferees.

World Financial's Proof of Claim No. 4 and Chase Manhattan Bank's Proof of Claim No. 11 both include incomplete account summaries, but do not separately itemize interest and other charges and do not include copies of pertinent monthly statements.

The Court acknowledges the case law cited by World Financial and Chase Manhattan Bank in their responses, and recognizes that the rules supplement the statutes rather than replace them. *In re Dove-Nation*, 318 B.R. 147, 151 (8th Cir. BAP 2004); 28 U.S.C. § 2075. However, the law on objections and allowance of claims is well settled in the Ninth Circuit and this Court. This Court discussed the applicable law governing the burden of proof for allowance of claims in *In re Eiesland*, 19 Mont. B.R. 194, 208-09 (Bankr. Mont. 2001):

A validly filed proof of claim constitutes *prima facie* evidence of the claim's validity and amount. F.R.B.P. 3001(f). The Ninth Circuit recently explained the general procedure for allocating burdens of proof and persuasion in determining whether a filed claim is allowable in *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000):

A proof of claim is deemed allowed unless a party in interest objects under 11 U.S.C. § 502(a) and constitutes "*prima facie* evidence of the validity and amount of the claim" pursuant to Bankruptcy Rule 3001(f). See also Fed. R. Bankr.P. 3007. The filing of an objection to a proof of claim "creates a dispute which is a contested matter" within the

meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief. See Adv. Comm. Notes to Fed. R. Bankr.P. 9014.

Upon objection, the proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed.1991)); *see also Ashford v. Consolidated Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151, 1996 WL 393533 (9th Cir.1996). To defeat the claim, the objector must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *In re Holm*, 931 F.2d at 623.

* * * *

"If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." *In re Consol. Pioneer*, 178 B.R. at 226 (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir.1992)). The ultimate burden of persuasion remains at all times upon the claimant. *See In re Holm*, 931 F.2d at 623.

See also Knize, 210 B.R. at 778; *Matter of Missionary Baptist Foundation of America*, 818 F.2d 1135, 1143 (5th Cir.1987); *In re Stoecker*, 143 B.R. 879, 883 (N.D.Ill.1992), *aff'd in part, vacated in part*, 5 F.3d 1022 (7th Cir.), *reh'g denied* (1993).

Thus, the Bank's Proof of Claim No. 2 is *prima facie* evidence of the validity and amount of its claim under Rule 3001(f), and the Debtor has the burden of showing sufficient evidence and to "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (quoting *Holm*). This Court finds that Eric, as the objecting party, has not produced sufficient evidence to cause the burden to revert to the Bank to prove the validity and amount of its claim. *Lundell*, 223 F.3d at 1039 (quoting *In re Consol. Pioneer*, 178 B.R. at 226).

The analysis under *Lundell v. Anchor Const. Specialists* was reiterated by the Ninth Circuit in *In re Los Gatos Lodge, Inc.*, 278 F.3d 890, 894 (9th Cir. 2002). Applying this analysis

to the instant case, World Financial's Proof of Claim No. 4 and Chase Manhattan Bank's Proof of Claim No. 11 are not given *prima facie* effect of the validity and amount by Rule 3001(f) because the account summaries attached to their respective claims are incomplete, and thus the burden is not shifted to the objecting party.

This Court's Local Rules and case law have consistently required that a Proof of Claim include an itemized summary of account showing at a minimum the unpaid principal, all accrued interest to the date of filing the petition, fees, costs and any other prepetition charges, per diem interest, the last date of payment, and in the case of transferred claims an identification of the transferors and transferees. *See, e.g., In re Michnal*, 19 Mont. B.R. 410, 413-14 (Bankr. D. Mont. 2001); Mont. LBR 3001-2, 3001-3; F.R.B.P. 3001(e) (transferred claims).

This Court's Local Rules and practice have the purpose of ensuring that allowed claims may be timely and efficiently determined, as does F.R.B.P. 3001 which requires at subpart (a) that a proof of claim "shall conform substantially to the appropriate Official Form." Official Form 10, utilized by Weistein & Riley in filing World Financial's and Chase Manhattan Bank's claims, includes in box 4 a check box advising the creditor to indicate and attach an itemized statement of all interest or additional charges, which the instructions to Form 10 repeats. Proofs of Claim Nos. 4 and 11 include only bare account summaries, but no pertinent monthly statements and no itemized summary statements of interest and other charges as required by this Court and Form 10.

Only a proof of claim executed and filed in accordance with the Rules shall constitute *prima facie* evidence of the validity and amount of a claim. F.R.B.P. 3001(f). Proofs of claims themselves are not final judgments, but rather it is the bankruptcy court's allowance or

disallowance of a proof of claim which is a final judgment. *In re Los Gatos Lodge, Inc.*, 278 F.3d at 894. Sections 501 and 502 limit filing of allowed claims to a “creditor” or other authorized party. The definition of “creditor” at 11 U.S.C. § 101(10)(A) means an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor”. Section § 502(b)(2) specifically prohibits claims for unmatured interest. This Court’s Local Rules requiring an itemized statement of account supplement §§ 501 and 502 and facilitate the Court’s determination of allowance of claims under those sections; they do not replace, supersede or override them.

The Court further agrees with Judge Overstreet’s observation in *In re Crowe*, 321 B.R. 729, 732 (Bankr. W.D. Wash. 2005), that even the filing of a summary “does not relieve a creditor of its obligation to provide all documents supporting the claim . . . upon request.” 321 B.R. at 732, citing *In re Shank*, 315 B.R. 799, 816 (Bankr. N.D. Ga. 2004) and *In re Cluff*, 313 B.R. 323, 335-36 (Bankr. D. Utah 2004) (both cases cited by World Financial and Chase Manhattan Bank in their briefs). The Trustee has a duty under 11 U.S.C. § 704(5) to “examine proofs of claims and object to the allowance of any claim that is improper.” The Rules provide guidance and a means for creditors to avoid expensive and time-consuming litigation by requiring an itemized statement of account and supporting documents sufficient to permit trustees to perform their duty without court involvement.

After reviewing World Financial’s Proof of Claim No. 4 and Chase Manhattan Bank’s Proof of Claim No. 11, the Court found that World Financial, Chase Manhattan Bank, and Weinstein & Riley failed to provide adequate itemized summaries of their accounts with pertinent monthly statements, and granted the creditors 30 days to amend their Proofs of Claim

and include an itemized summary for each claim in conformity with this Court's Local Rules¹ and serve it on Deschenes, after which the Trustee shall withdraw his objections or renounce his objections for hearing.

IT IS ORDERED World Financial Network National Bank c/o Weinstein & Riley, for Chadwicks, and Chase Manhattan Bank U.S.A., NA, as successor to Bank One Delaware, NA, also c/o Weinstein & Riley, are granted thirty (30) days from the date of this Order in which to file amended Proofs of Claim for their respective Proofs of Claim Nos. 4 and 11, in compliance with Mont. LBR Rules 3001-2, 3001-3 and other applicable rules, including with each amended claim an itemization of interest, fees, costs and other incurred charges to the date of filing the petition, copies of pertinent monthly statements and, if appropriate, a reference to any transfer of claims including identification of transferors and transferees; and the Trustee shall thereafter either file a withdrawal of his objections to World Financial's and Chase Manhattan Bank's claims, or renounce the matters for hearing on October 20, 2005, at Great Falls.

BY THE COURT



HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana

¹Proofs of Claim are required by Mont. LBR 3001-2 to include as an attachment "an itemized summary of the account showing, as of the date of the filing of the petition, the unpaid principal balance, all accrued interest, forced placed insurance, late charges, and other charges." Mont. LBR 3001-3 states: "If interest upon a debt is to be claimed, the proof of claim must state the dollar amount of interest claimed on the principal, and the rate of interest and per diem from and after the date of filing. Failure to comply with this rule shall be deemed a waiver of any claim for interest upon the debt, without need for formal objection by the trustee or debtor-in-possession, and without need for a hearing."

